

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1064 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

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MOHANBHAI PANCHABHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

Shri J.R. NANAVATI, Advocate, for the Petitioners.

Shri T.H.Sompura, Assistant Government Pleader, for the Respondents.

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 11/04/96

ORAL JUDGEMENT

The order passed by the Deputy Collector of Rajkot (respondent No.3 herein) on 25th January 1981 at Annexure-A to this petition as affirmed in appeal by the common order passed by the Collector of Rajkot

(respondent No.2 herein) on 30th April 1994 at Annexure-B to this petition as further affirmed in revision by the order passed by and on behalf of the State Government (respondent No.1 herein) on 13th October 1995 at Annexure-C to this petition is under challenge in this petition under Article 226 of the Constitution of India. By his impugned order, respondent No.3 set aside the order passed by the Mamlatdar at Rajkot on 9th July 1987 allowing conversion of the lands in question to leasehold rights.

2. It is not necessary to set out in detail the facts giving rise to this petition as this petition can be disposed of on one short ground. It transpires from the material on record that the petitioners claimed that the lands in question were not Government lands. The authorities below have treated these lands to be Government lands. A dispute regarding ownership of a land against the Government will have to be decided in accordance with section 37 (2) of the Bombay Land Revenue Code, 1879 (the Code for brief) and it could not be decided in any collateral proceedings including any collateral proceeding under section 211 thereof. A similar view has been taken by this court in its unreported ruling in Special Civil Application No.3184 of 1983 decided on 4th April 1996. As pointed out hereinabove, in a collateral proceeding under section 211 of the Code, respondent No.3 has decided the lands in question to be Government lands without taking recourse to section 37 (2) of the Code. This cannot simply be permitted to be done.

3. In view of my aforesaid discussion, I am of the opinion that the impugned orders at Annexures-A, B and C to this petition cannot be sustained in law. They have to be quashed and set aside. This judgment of mine shall not preclude the respondents or any proper authority from conducting any inquiry under section 37 (2) of the Code with respect to the claim against the Government qua the lands in question and to pass appropriate orders pursuant thereto in the nature of the orders which are under challenge in this petition. It is obvious that the petitioners will be associated with all the proceedings including the proceeding under section 37 (2) of the Code.

4. In the result, this petition is accepted. The order passed by the Deputy Collector at Rajkot on 25th January 1991 at Annexure-A to this petition as affirmed in appeal by the order passed by the Collector of Rajkot on 30th April 1994 at Annexure-B to this petition as

further affirmed in revision by the order passed by and on behalf of the State Government on 18th November 1995 at Annexure-C to this petition is quashed and set aside. It would be open to the respondents or the appropriate authority to institute an inquiry under section 37 (2) of the Act and to act in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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